

February 13, 1975

SENATOR CAVANAUGH: It would be repetitious.

SENATOR WARNER: On that basis I would oppose it only for the reason that it seems to me unless this body has no speculation on how D.W.I. would be handled but firm knowledge as to what the alternative is, it would be illadvised to adopt the amendment and then pretend to send the bill on. If it is adopted I will move to bracket the bill.

PRESIDENT: Senator Nichol do you wish to be heard?

SENATOR NICHOL: Just one second please. It was suggested that this person, when they come into the hospital, is the same as any other person. As I understand from the hearing they are not always the same as any other person. In other words, when they come in to have this blood test taken sometimes they flail around, making it difficult to take the blood sample. It is at this time that sometime a needle is broken or sometime a larger hole is poked into their skin then would be if they were docile and not doing this. Secondly, I think some of the objection of the hospital is because of the availability of free legal services nowadays, they are being faced with, they think, of additional lawsuits where they wouldn't ordinarily be. I think they are concerned with this somewhat. Thank you.

PRESIDENT: Senator Cavanaugh do you choose to close by way of reply very briefly.

SENATOR CAVANAUGH: Mr. President, Senator Syas misconstrued my remarks. My position here is not to encourage a test one way or the other. What you're saying is either the hospital has the same obligation, I think the hospital has the same obligation to due care to everybody who comes in to their doors. Now you simply cannot say that they do not, particularly in a situation where you are compelling a person under penalty of law to submit themselves to this particular treatment. You just do great violence to the individual's right and what he should expect. This person is not guilty of any crime. He is fulfilling an obligation that he has to the state when he is placed under arrest for suspicion of drunken driving to fulfill the test. The people who administer that test . . . this person cannot be placed in responsibility where injury is done to him that he cannot recover as any other individual who submits himself to treatment. This is not a lawyers paradise. A lawyer is going to have to prove negligence. He's going to have to prove injury, the same as in any other case. So I go to the hospital my appendix removed and something happens to me, I have to prove negligence and I have to prove injury. I should be entitled to the same thing under these conditions. There is no good purpose to exempt any person who treats a human body for any reason to expect them to do it in any manner other than a manner or due care in the absence of negligence. I move the adoption of the amendment.

PRESIDENT: The question is the Cavanaugh amendment to the bill talked about by Senator Luedtke. Record your vote. Would the senators please vote. Record the vote. You want a roll call vote?